

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TIMOTHY L. WORKMAN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 00-1030 JJF
	:	
SGT. BARRY BILES and	:	
SGT. GARY CAMPBELL,	:	
	:	
Defendants.	:	

Timothy L. Workman, Seaford, Delaware.
Pro Se Plaintiff.

Stuart B. Drowos, Esquire of the Department of Justice, State of
Delaware, Wilmington, Delaware.
Attorney for Defendants.

MEMORANDUM OPINION

March 18, 2004

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court is a Motion To Dismiss For Failure To Prosecute Pursuant To Fed. R. Civ. P. 41(b) (D.I. 20) filed by Defendants Sgt. Barry Biles, and Sgt. Gary Campbell (collectively "Defendants"). For the reasons discussed, the Court will grant Defendants' Motion To Dismiss For Failure To Prosecute Pursuant To Fed. R. Civ. P. 41(b).

BACKGROUND

Plaintiff, Timothy Workman ("Plaintiff"), is a former inmate who was incarcerated and under the supervision of the Delaware Department of Correction at the Sussex Correctional Institution ("SCI") in Georgetown, Delaware. On November 9, 2000, Plaintiff filed the instant action pursuant to 42 U.S.C. § 1983. In his Complaint, Plaintiff alleges a claim of cruel and unusual punishment in violation of the Eighth Amendment. Specifically, Plaintiff alleges that Defendants Biles and Campbell used excessive force on him during a "shakedown" that took place at SCI on or about August 15, 2000. (D.I. 2 at 3). By their Motion To Dismiss, filed July 30, 2003, Defendants seek dismissal of Plaintiff's Complaint due to Plaintiff's failure to justify the reasons for his inaction in this case. (D.I. 20 at 2).

DISCUSSION

I. Standard of Review

Rule 41(b) of the Federal Rules of Civil Procedure addresses the involuntary dismissal of an action and claim and provides:

For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Fed. R. Civ. P. 41(b).

Generally, courts are required to consider the following six factors when entertaining a dismissal for failure to prosecute:

(1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal; and (6) the meritoriousness of claim or defense. See Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863, 868 (3d Cir. 1984). Not all of the Poulis factors need to be satisfied for the Court to conclude that dismissal is warranted. Id. at 868; see Hicks v. Feeney, 850 F.2d 152, 156 (3d Cir. 1998). Rather, the Court should balance the factors in light of the facts and circumstances in each case to determine if dismissal is appropriate. Poulis, 747 F.2d at 870.

II. Whether Defendant's Motion To Dismiss Should Be Granted

Applying the Poulis factors in the circumstances of this case, the Court concludes that dismissal of Plaintiff's Complaint

is warranted. Plaintiff has demonstrated a history of dilatoriness beginning with the inception of this action. Although Plaintiff was notified by the Court of the need to serve the Attorney General of the State of Delaware, Plaintiff failed to file the necessary forms to effectuate service. By Order dated February 26, 2002, the Court reiterated the need for Plaintiff to effectuate service on the Attorney General and required Plaintiff to promptly complete and file a USM-285 form for the Attorney General or show cause why this case should not be dismissed for failure to serve process and for failure to prosecute.

Plaintiff did not respond to the Court's Order, and the case remained inactive for a year and a half until Defendants filed the instant Motion To Dismiss on July 30, 2003. In accordance with District of Delaware Local Rule 7.1.2 (a), an Answering Brief was due to be filed within ten days. Plaintiff failed to file an Answering Brief or otherwise respond to Defendants' Motion. On October 31, 2003, the Court issued a second Order to show cause within twenty days why this case should not be dismissed. To date, the Plaintiff has failed to respond to any of the Court's Orders.

The responsibility to serve the Attorney General and comply with the Court's Orders rested solely with Plaintiff, as he is appearing pro se in this action. The Court allowed Plaintiff ample time to serve the Attorney General, yet Plaintiff failed to

complete service. The Court again allowed Plaintiff ample time to respond to Defendant's Motion To Dismiss before issuing its latest Order to show cause, and Plaintiff has again failed to respond to Defendant's Motion or the Court's Order.

In sum, this action has remained inactive for more than two years, as a result of a pattern of dilatoriness solely attributable to Plaintiff. Plaintiff has repeatedly failed to follow the Civil Rules of Procedure in prosecuting this action and has repeatedly ignored the Court's Orders. Given Plaintiff's consistent failure to respond to the Court's Orders, the Court is also persuaded that sanctions other than dismissal would be ineffective. Accordingly, the Court concludes that dismissal of this action for failure to prosecute is warranted.

CONCLUSION

For the reasons discussed, Defendant's Motion To Dismiss For Failure To Prosecute Pursuant To Fed. R. Civ. P. 41(b) (D.I. 20) will be granted.

An appropriate Order will be entered.

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FOR THE DISTRICT OF DELAWARE

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Plaintiff,	:	
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SGT. BARRY BILES and	:	
SGT. GARY CAMPBELL,	:	
	:	
Defendants.	:	

O R D E R

At Wilmington, this 18th day of March 2004, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss For Failure To Prosecute (D.I. 20) is **GRANTED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

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SGT. GARY CAMPBELL,	:	
	:	
Defendants.	:	

FINAL JUDGMENT IN A CIVIL CASE

For the reasons set forth in the Court's Memorandum
Opinion and Order dated March 18, 2004;

IT IS ORDERED AND ADJUDGED that judgment be and is
hereby entered in favor of Defendants, Sgt. Barry Biles and Sgt.
Gary Campbell, and against Plaintiff, Timothy L. Workman.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

Dated: March 18, 2004

DEBORAH L. KRETT
(By) Deputy Clerk